RENGANATHAN vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan C.J. Malayan Union, Murray Aynsley C.J. Singapore, and Bostock Hill J.) July 7, 1947]

Penal Code, Section 375 and 376 — Rape — Consent — Proof that girl is under fourteen years of age.

In this case the appellant was convicted of the offence of rape contrary to Section 376 of the Penal Code. The evidence in the case indicated that the girl gave her consent to the intercourse. There was no definite evidence to show that the girl was under fourteen years of age.

Held, that as the learned trial Judge was of opinion that the girl gave her consent to the intercourse and as there was no definite proof that the girl was under fourteen years of age the conviction for rape was wrong and must be quashed.

CRIMINAL APPEAL.

Appellant in person.

J. C. N. Kilner for the Respondent.

The judgment of the Court was delivered by :—

Willan, C. J. : — In this case the appellant was convicted of the offence of rape contrary to section 376 of the Penal Code.

By section 375 of that Code a man does not commit rape if he has sexual intercourse with a woman with her consent if she is over fourteen years of age.

In this case the learned trial Judge in his grounds of judgment states as follows :—

> "I was of opinion that the girl did not object to the intercourse and, in a non legal sense, may even have consented."

This, in our view, can only mean that the learned trial Judge found as a fact that the girl gave her consent. That being so the evidence of the age of the girl is vital.

As to this the mother of the girl gave evidence that the girl was between ten and fifteen years of age. The Medical Officer who examined the girl gave evidence that in his opinion the girl is about twelve or thirteen years of age. He was not asked if, in his opinion, she was definitely under fourteen years of age.

Accordingly, since there is no definite proof that the girl was under fourteen years of age we allow this appeal and quash the conviction and sentence.

Appeal Allowed.

ABU BAKAR bin IMAM IDRIS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan C.J., M.U., Murray Aynsley C.J. S'pore, and Bostock Hill, J.) July 9, 1947]

Penal Code, Section 34 — Common Intention — Necessity of showing that criminal act was committed in furtherance of a common intention.

In this case the appellant appealed against his conviction for the murder of one Kunya Ahmad Kutty. The evidence showed that the deceased was stabbed by three persons, one of whom was the appellant. In his summing up the learned Judge said inter alia "If two or three or four people take part in any act which leads to the death of another person and they act in conjunction, then every one of those four is equally guilty of the death of the victim, and therefore, if you believe the evidence, the fact that the accused delivered two blows, the unknown Malay delivered another blow and the prosecution witness (Ismail) himself delivered another blow makes no difference whatsoever. If murder is proved all striking blows in the circumstances described by the witness are equally guilty. If you are satisfied beyond reasonable doubt that any one of those blows which led to the death of the victim was delivered by the accused that is sufficient for the purposes of this charge."

Held, (1) that to establish guilt under Section 34 of the Penal Code it is necessary to prove a common intention, and it must be shown that the criminal act was done in furtherance of that intention;

(2) that the summing up of the learned Judge in this case concentrated on the joint nature of the acts themselves rather than on the common intention to commit those acts and because of this misdirection the conviction must be quashed and a retrial ordered.

Case referred to :—

Mahbub Sha, A.I.R. (1945), P.C. 118, at p. 120.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

B. D. W. Good for the Respondent.

The judgment of the Court was delivered by :—

Willan, C. J. : —This is an appeal against the conviction of the appellant for the murder of one Kunya Ahmad Kutty, hereinafter in this Judgment referred to as "the deceased".

The evidence for the prosecution was that about 8 o'clock on the morning of the 15th day of October, 1946, the appellant and the deceased were walking along a path towards a certain place where the appellant was to sell some goats to the deceased.

On their way they met a Malay, named Ismail bin Haji Ali, hereinafter in this judgment referred to as Ismail. According to Ismail he accompanied the appellant and the deceased along this path, at the invitation of the appellant. The three of them walked in single file the deceased first, the appellant second and Ismail last.

What happened subsequently rests entirely on the evidence of Ismail. His version is that whilst the three of them were walking along this path in the order just mentioned, the appellant drew a kris from his waist and stabbed the deceased in the back, below the ribs, on the right side. The deceased fell down immediately and the appellant stabbed him a second time in the forehead. Ismail asked the appellant why he had stabbed the deceased and the appellant replied that he wanted to take the deceased's money.